

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SILVON SIMMONS,

Plaintiff,

v.

JOSEPH M. FERRIGNO, II, SAMUEL GIANCORSIO,
MARK WIATER, CHRISTOPHER MUSCATO,
ROBERT WETZELL, MICHAEL CIMINELLI, JOHN
DOES 1-20, CITY OF ROCHESTER,
SHOTSPOTTER INC., SST, INC., JOHN DOES 21-30
and PAUL C. GREENE,

Defendants.

STATEMENT OF UNDISPUTED
FACTS

Case No.: 17-cv-6176

STATEMENT OF UNDISPUTED FACTS

Defendants City of Rochester, Joseph M. Ferrigno, II, Samuel Giancursio, Mark Wiater, Christopher Muscato, Robert Wetzell, Michael Ciminelli through his attorneys Patrick Beath, of counsel, present for pre-trial purposes a Statement of Undisputed Facts, hereby submits the following:

1. On April 1, 2016 Police Officers Joseph Ferrigno (hereinafter "Ferrigno") and Samuel Giancursio (hereinafter "Giancursio") conducted a traffic stop at 1384 Lyell Avenue around 8:50 p.m.
2. Around 8:10 p.m. Plaintiff was involved in an altercation in his front yard and gunfire, from a third party, occurred.
3. On April 1, 2016 at approximately 8:55 p.m. Plaintiff, Silvon Simmons (hereinafter "Simmons"), was riding in a Chevy Impala operated by Detron

Parker (hereinafter "Parker") and owned by his girlfriend, Shawneequa Tillison.

4. Plaintiff and Parker drove from 9 Immel Street to a convenient store and a liquor store and were returning to 9 Immel Street.
5. Ferrigno and Giancursio spotted the vehicle that Simmons was a passenger in.
6. The vehicle matched the make and closely matched the color and description of a vehicle commonly driven by a wanted suspect sought for Menacing in the Second Degree and who was known to possess fire arms.
7. The vehicle driven by Parker was backed into the driveway at 9 Immel Street by Parker and the vehicle was turned off.
8. Rochester Police Officer Joseph Ferrigno drove up to 9 Immel Street, behind Parker's vehicle and stopped along the curb at the end of the driveway at 9 Immel Street.
9. When Ferrigno stopped his marked police vehicle in front of 9 Immel Street he shined a spotlight at Plaintiff and according to Ferrigno said Police, Stop while wearing a fully equipped Rochester Police Department uniform.
10. Officer Ferrigno got out of his police vehicle and started running up the driveway towards Plaintiff.
11. Plaintiff started running away from Officer Ferrigno and further up the driveway towards the backyard of 5 Immel Street.

12. Plaintiff was running away from Officer Ferrigno, towards his backyard, Ferrigno saw Plaintiff turn towards him and saw a muzzle flash and heard a gunshot .
13. Officer Sam Giancursio felt a rush of air over his head and heard the gunshot.
14. Officer Ferrigno fired his service revolver four (4) times at Plaintiff, striking the Plaintiff three (3) times.
15. After he was shot, the Plaintiff dove over a fence which led to his backyard and attempted to crawl to his backdoor.
16. Plaintiff was physically unable to get to his back door and fell into the yard.
17. Other officers arrived and found a Ruger hand gun by the Plaintiff.
18. Plaintiff was handcuffed, arrested and taken by ambulance to Strong Hospital for treatment of his gunshot wounds.
19. Immediately after being the Staff Duty Officer at the scene of the officer-involved shooting, Captain Mark Wiater contacted the gunfire detection company ShotSpotter and asked them to open a wider window to see if there was additional gunfire at 9 Immel Street that evening.
20. This Officer Involved Shooting was investigated by the Rochester Police Department's Major Crimes Unit and the Professional Standards Section.
21. The ShotSpotter located and recorded 5 gunshots timed at around 9:10 p.m. in or around the vicinity of 9 Immel Street. There was a small shot detected and then 4 larger gun shots in quick succession.

DATED: February 28, 2024

PATRICK BEATH, CORPORATION COUNSEL

/s/John M. Campolieto

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